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18 January 2007

Secretary for Financial Services and the Treasury
[Attn: Mr Alfred FOK, PEO(G)]
Financial Services and the Treasury Bureau
(The Treasury Branch)
4/F, Main Wing, CGO
Lower Albert Road
Hong Kong

Dear Mr FOK,

**Establishment Subcommittee
Follow-up to meeting on 17 January 2007**

**Proposed creation of one supernumerary post of Administrative Officer
Staff Grade C (D2) to head a dedicated team to take forward the
cruise terminal project**

When the Establishment Subcommittee (ESC) considered the above item at the meeting on 17 January 2007, members referred to the question raised at the Panel on Planning, Lands and Works on the Government's proposal of granting a 50-year lease for the operation of the Cruise Terminal. Members noted that the Secretary for Housing, Planning and Lands had subsequently provided a written response and quoted the 1997 HKSAR Policy Statement as the authority for the term of land grants or leases to extend beyond 30 June 2047.

While ESC members have given support to the establishment proposal, they were concerned about the legality of the proposed granting of the 50-year land lease. Members considered that as the issues involved go beyond the scope of work of the Economic Development and Labour Bureau (which oversees the Cruise Terminal) and the Housing, Planning and Lands Bureau (which deals with lands matters), the Department of Justice and the relevant authorities should study the issues carefully especially in the light of Article 5 of the Basic Law. In addition, Members urged the Administration to clarify the legal basis for the

1997 Policy Statement and to provide a detailed response to address members' concerns before the establishment proposal is put to the Finance Committee for endorsement.

In this connection, you may wish to clarify specifically in your written response the following queries raised by members at the ESC meeting:

- (a) Why the Government can assume that it has the authority to determine the term of a new land grant which extends beyond 30 June 2047 when such authority is not provided in the Basic Law;
- (b) Has there been any communication with the Central Government which is relevant to the Administration's policy statement that the HKSAR Government may grant or lease land for a term which extends beyond 2047;
- (c) Whether there is any evidence to show that HKSAR Government's current policy of granting land leases beyond 2047 is authorized by the Central Government or acknowledged by the Central Government as legally in order under the Basic Law; and
- (d) If such evidence is not available, would the HKSAR Government take steps to obtain such authorization to put it beyond doubt that it may grant land leases beyond 2047 or to specify in land leases the specific conditions that such leases are subject to after 2047.

I should be grateful if the Administration's written response could be forwarded to us by 5 February 2007 before the above item is considered by the Finance Committee.

With best regards,

(Ms Debbie YAU)
Clerk to Establishment Subcommittee

c.c. Hon LI Fung-ying, BBS, JP (Chairman)

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局

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Urgent By Fax

6 February 2007

Clerk to Establishment Subcommittee
Legislative Council Secretariat,
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong.

(Attn: Ms Debbie YAU)

Dear Ms YAU

**Establishment Subcommittee
Follow-up to meeting on 17 January 2007**

**Proposed creation of one supernumerary post of Administration Officer
Staff Grade C (D2) to head a dedicated team to take forward the
cruise terminal project**

Thank you for your letter dated 18 January 2007 to the Secretary for Financial Services and the Treasury. As requested, the Administration's written response is attached.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Diane Wong', with a horizontal line extending to the right.

(Miss Diane Wong)
for Secretary for Housing, Planning and Lands

Grant of Land Lease by the Government of the Hong Kong Special Administrative Region

The Administration reaffirms that under the Basic Law, it is within the constitutional competence of the Government of the Hong Kong Special Administrative Region (HKSARG) to grant land with a term beyond 30 June 2047. In response to the concerns raised by the LegCo Establishment Subcommittee (ESC) on 17 January 2007, we shall set out the reasons as follows.

Summary

2. Under Basic Law (BL) Article 7, the land and natural resources of the HKSAR shall be State property, but the HKSARG shall be responsible for the management, use and development of land and natural resources within the HKSAR and for their lease or grant to individuals, legal persons or organizations for use or development. The SARG is therefore entrusted with the constitutional power and function to manage and grant land within the HKSAR in accordance with its land policies.

3. The period for which this authorization may have effect is unqualified in terms of time and is not limited to a duration of 50 years (i.e. up to 2047). There is **no** provision in the Basic Law which provides that new grants of land should expire on 30 June 2047 or to that effect. Whether the HKSAR has power to grant leases of land for a term extending beyond 2047 is a matter that could not have escaped the attention of the Central Authorities and the drafters of the Basic Law. In fact, other provisions in the Basic Law show that the matter had been contemplated, and there is no provision to restrict the otherwise unlimited power to grant land beyond 2047 under BL 7.

BL 120 - Lease beyond 2047

4. Firstly, BL 120 provides for the recognition and protection of leases granted or renewed before 1997 under the laws of the HKSAR. BL 120 reads as follows:

“All leases of land granted, decided upon or renewed before the establishment of the Hong Kong Special Administrative Region which extend beyond 30 June 1997, and all rights in relation to such leases, shall continue to be recognized and protected under the law of the Region.”

5. These pre-97 leases would include those with a term of 999 years or a term of 75 years with a right of renewal for another 75 years. Moreover, all rights in relation to such leases would include the right to renew the land lease for another term upon expiry after 1997. This is to be contrasted with BL123 which deals with leases without such a right of renewal.

6. As the most common type of leases in Hong Kong and Kowloon before 1997 was the 75-year lease renewable for a further 75 years, there were in force leases pre-97 with right to renew for terms that would extend beyond 2047. Thus, it was already contemplated at the time when the Basic Law was drafted that the HKSAR would in effect be committing land grant with an enforceable term, upon exercise of the right of renewal, beyond 2047. For example, a lease expiring in 2025 with a right of renewal for 75 years would expire in 2100 in accordance with BL 120. Some actual cases are set out in the Annex I.

BL 121 – leases granted between 1985 - 1997

7. BL 121 is also relevant and reads as follows:

“As regards all leases of land granted or renewed where the original leases contain no right of renewal, during the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047, the lessee is not required to pay an additional premium as from 1 July 1997, but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter, shall be charged.”

8. BL 121 deals with leases granted between 1985 and 1997, without rights of renewal. The singling out of “original leases containing no right of renewal” reinforces the above interpretation of BL120, i.e. all rights in the original lease including right of renewal will be respected.

9. BL 121 refers to leases which expire not later than 30 June 2047. But this is not a deadline. It is merely to clarify that there is no need to pay any additional premium. It is just an imposition of government rent (which is subject further to the exemptions provided for in BL 122 in respect of certain rural holdings).

BL 123 – leases expiring after 1997

10. BL 123 specifically provides for the expiry of leases after 1997 without a right of renewal. It reads as follows:

“Where leases of land without a right of renewal expire after the establishment of the Hong Kong Special Administrative Region, they shall be dealt with in accordance with laws and policies formulated by the Region on its own.”

11. BL 123 deals with, implicitly, the grant or renewal of leases after 1997 upon the expiry of original leases after 1997 (which is quite natural after BL 120 and BL 121). The Basic Law drafters clearly had contemplated the grant of leases expiring beyond 2047. However, this is a blanket authorisation without imposing any restriction on the HKSARG’s power to grant leases beyond 2047. Unlike in 1997, it is significant that in 2047 there will not involve any change of sovereignty. Thus, there is no automatic termination of tenure.

BL 5 – maintenance of the pre-97 capitalist system

12. BL 5 provides for the maintenance of the pre-97 capitalist system for 50 years and reads as follows:

“The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.”

13. What it says is that before 2047, the previous capitalist system shall remain unchanged. BL 5 does not say that after 2047 the previous capitalist system shall change, or that after 2047 the socialist system shall apply in the HKSAR.

Plenary power of the SARG to grant leases under BL 7

14. However, the discussion of capitalist system or socialist system is beside the point, because what matters is the authorization to grant leases of land expiring beyond 2047. There is simply no provision in the Basic Law which provides that such leases would only last for the balance of 50 years from 1 July 1997 remaining at the date of grant.

Instead, the authorization to grant leases of land, as provided for in BL7, specifies no limitation on the term of such a lease.

15. Under BL 7, the HKSARG has the constitutional power and function to grant leases beyond 2047 under the following terms:

“The land and natural resources within the Hong Kong Special Administrative Region shall be State property. The Government of the Hong Kong Special Administrative Region shall be responsible for their management, use and development and for their lease or grant to individuals, legal persons or organizations for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region.”

16. Since land is a precious asset in Hong Kong, if the intention of the Basic Law were such that all the land grants or leases should carry a term no further than that date, effect on both the land value and economy of the HKSAR would be detrimental. Such a reading of the Basic Law would lead to the absurd situation that the SARG could only grant leases for an unreasonably short term as we approach 30 June 2047. That could not have been the intention of the Basic Law.

17. The above legal position tallies with the explanation given by Director Lu Ping in May 1995. We attach an extract from a speech (and the translation thereof) on the subject of land leases delivered on 18 May 1995 by Mr Lu Ping, the then Director of the Hong Kong and Macau Affairs Office of the State Council, at a luncheon talk hosted by the Preliminary Working Committee’s Economic Sub-group in Hong Kong (see Annex II). The content of that speech was reported by newspapers on 19 May 1995. As explained by Director Lu,

“the question of the period of land leases granted after 1997 is already authorized by the Central Government to be handled by the SAR Government and shall be something within the SAR Government’s responsibilities. Therefore, we do not believe that we need to have a limitation on year 2047. All contracts and agreements can, according to needs, go beyond year 2047.”

Conclusion

18. To conclude, there is no doubt that the HKSARG has the constitutional competence to grant leases of land with a term beyond 2047 under BL 7 when the latter is construed in the light of other provisions of the Basic Law¹.

¹ The above conclusion is supported by the comment of Professor Wang Shuwen, a former member of the Basic Law Drafting Committee, in his commentary *Introduction to the Basic Law of the HKSAR* (Eng. Ed. (2000), at pp. 614-615).

Annex I

**Some examples of
leases granted by the Hong Kong Government before 1.7.97
with a lease term expiring after 2047**

	Name, address and lot number	Year in which the lot was first granted	Lease term	Year in which the first term expires	Year in which the second term expires
1.	Hing Pont House 3 Sung Hing Lane, Sai Ying Pun IL 3043 RP	January 1930	75 years renewable for another 75 years	January 2005	January 2080
2.	Chun Hing Mansion 19-21 King Kwong Street, Happy Valley IL 8095 RP	January 1931	75 years renewable for another 75 years	January 2006	January 2081
3.	Yue Xiu Building 160-174 Lockhart Road, Wan Chai (IL 2793 RP)	May 1929	99 years renewable for another 99 years	May 2028	May 2127
4.	Sheraton Hong Kong Hotel 20 Nathan Road, Tsim Sha Tsui (KIL 9172)	November 1969	75 years renewable for another 75 years	November 2044	November 2119

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Extract from the Speech delivered by
Mr Lu Ping, the then Director of the Hong Kong and Macau Affairs Office
of the State Council, at a luncheon talk hosted by the
Preliminary Working Committee's Economic Sub-group
in Hong Kong
(English Version)

Land Leases

Finally, I would like to talk about the question of land leases after 1997. According to the Basic Law, the period of land leases granted or renewed before June 30, 1997 cannot go beyond June 30, 2047. The question is: Does this mean that the period of land leases granted after 1997 can only go to June 30, 2047? The Basic Law has no clear guideline on this except that under Article 123, it was mentioned that land leases shall be dealt with in accordance with laws and policies formulated by the Region on its own. In this respect, we have considered that if all land leases granted or renewed after 1997 have a year 2047 limit, then land leases will have periods starting with 50 years and then decrease each year thereafter. At the end, there may be situations where land leases cannot be granted. Article 5 of the Basic Law has a provision for 50 years but it only refers to the capitalist system and way of life of Hong Kong. It cannot mean that everything has to have a 50 years limitation. Further, unchanged for 50 years does not mean that there will be changes after 50 years. The Basic Law itself also has no time period limitation. The Basic Law adopted by the Seventh

National Peoples' Congress on April 4, 1990 only specifies that the Basic Law shall be put into effect as of July 1, 1997 but does not say for how many years it will be effective.

Further, the period of land leases has no connection with the social system practised. In the Mainland, we practise socialism and the period of land leases granted generally are also around 50 years. Therefore, the period of land leases has no automatic relation with capitalism being practised in Hong Kong.

Article 7 of the Basic Law specifies that the land and natural resources within the Hong Kong SAR shall be State property. The Government of the Hong Kong SAR shall be responsible for their management, use and development and for their leases or grant to individuals, legal persons or organizations for use or development. The revenue derived therefrom shall be exclusively at the disposal of the Government of the Region. According to this Article, the question of the period of land leases granted after 1997 is already authorized by the Central Government to be handled by the SAR Government and shall be something within the SAR Government's responsibilities. Therefore, we do not believe that we need to have a limitation on year 2047. All contracts and agreements can, according to needs, go beyond year 2047.